in Kuching. The appellant did not go to sleep. They did what they could and they wrote to the Registrar, High Court, Singapore, requesting for information regarding the outcome of the service on August 15, 1979, September 2, 1979, October 2, 1979 and October 15, 1979. This is not a case like *The "NIMROD"*(3) (which is relied on by the respondents both before the learned Chief Justice and this court) where the court decided that a judge should not lend assistance to plaintiffs who had negligently left the service of the writ until the last minute. The appellants cannot be said to have been negligent at all.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Godwin & Co.; Drew & Napier.*

TAN KAI MEE v. LIM SOEI JIN

[A.C.J. (Sinnathuray J.) September 24, 1980]
[Singapore — District Court Appeal No. 88 of 1979]

Family Law — Husband and wife — Maintenance — Deed of separation — Clause "wife shall not at any time apply to court to vary the maintenance order" — Bad in law and against public policy — Women's Charter (Cap. 47).

One of the grounds of appeal in this case was that the learned Magistrate should have given effect to a clause in the Deed of Separation which provided that the respondent/wife shall not at any time apply to the courts to vary the maintenance order.

Held: the clause was bad in law because it was not within the province of the parties to contract out of the Women's Charter. It was also bad in law because such a clause would be contrary to public policy, for the parties to contract to oust the jurisdiction of the courts.

DISTRICT COURT APPEAL.

Appellant in person.

Mohamed Harith Kassim (Assistant Director of Legal Aid) for the respondent.

Sinnathuray J. (delivering oral judgment): There is nothing in this appeal. All the facts were before the learned Magistrate. I have heard the appellant this morning. He gave me his income and his expenses. His statement confirms that the learned Magistrate was right when he ordered the maintenance order to be varied from $200 to $400 a month.

There is one other ground of appeal. It is that the learned Magistrate should have given effect to a clause in the Deed of Separation which clause provides that the respondent, wife, shall not at any time apply to the courts to vary the maintenance order. As was submitted by Mr. Kassim for the respondent that clause is bad in law because it is not within the province of the parties to contract out of the Women's Charter. It is also bad in law because such a clause would be contrary to public policy, for the parties to contract to oust the jurisdiction of the courts. So then, that ground also fails. For these reasons, the appeal must be dismissed.

Appeal dismissed.

TAN CHAI HENG v. YEO SENG CHOON

[O.C.J. (Choor Singh J.) September 30, 1980]
[Singapore — Motion in Originating Summons No. 239 of 1980]

Practice and Procedure — Appeal — Notice — Extension of time for filing — Solicitor's file mislaid.

Legal Profession — Failure to serve Notice of Appeal in time — Duty of solicitor to exercise reasonable diligence.

The Originating Summons was heard before the Honourable the Chief Justice on July 18, 1980 who dismissed it with costs. The last day for filing the Notice of Appeal was August 18, 1980. No Notice of Appeal was filed on that date. On August 29, 1980 an application was made to the court for extension of the time prescribed for filing the Notice of Appeal. The reason for the failure to file the Notice of Appeal in time was contained in the affidavit of the appellant's solicitor as follows:—

> "...The Notice of Appeal was prepared on the 18th day of July 1980. However the cause paper file pertaining to this matter was misplaced in my office library which was then undergoing renovations. Hence the said Notice of Appeal was not filed in Court. It was only on the 20th day of August 1980 in the afternoon after an exhaustive search that I discovered the file.
>
> Upon an inspection of the file, I noticed that the Notice of Appeal was not filed in Court. I immediately instructed my Clerk to file the same, but the same was rejected by the Registry of this Honourable Court as the last day for filing the Notice of Appeal expired on 18th August 1980."

Held: the facts disclosed in the affidavit showed gross negligence on the part of the appellant's solicitor and did not merit the exercise of judicial discretion in favour of the applicant.

Case referred to:

(1) *Ratnam* v. *Cumarasamy* [1965] 1 M.L.J. 228; [1964] 3 All E.R. 933.

MOTION.

Venu Gopal for the applicant.

Peter Tio Pee Tat for the respondent.

Choor Singh J.: This Originating Summons was heard before the Honourable the Chief Justice on July 18, 1980 when it was dismissed with costs. The last day for filing the notice of appeal was August 18, 1980. No notice of appeal was filed by that date.

On August 29, 1980 an application was made before me for an extension of the time prescribed for the filing of the notice of appeal. The reason for the failure to file the notice of appeal in time is stated in the affidavit of the appellant's solicitor filed in support of the application, as follows: —

> "...The Notice of Appeal was prepared on the 18th day of July 1980. However the cause paper file pertaining to this matter was misplaced in my office library which was then undergoing renovations. Hence the said Notice of Appeal was not filed in court. It was only on the 20th day of August 1980 in the afternoon after an exhaustive search that I discovered the file.
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> Upon an inspection of the file, I noticed that the Notice of Appeal was not filed in court. I immediately instructed my clerk to file the same, but the same was rejected by the Registry of this Honourable Court as the last day for filing the Notice of Appeal expired on 18th August 1980."

In my view the facts disclosed in the affidavit indicate that neither the solicitor nor his clerk used sufficient diligence to ensure the appeal being brought in time.